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No. 85-884

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

R. BANKS, ET AL.,

Petitioners,

v.

PAN AMERICAN WORLD AIRWAYS, INC. and
ELIZABETH HANFORD DOLE,
SECRETARY OF TRANSPORTATION

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

BRIEF FOR RESPONDENT PAN AMERICAN WORLD AIRWAYS, INC. IN OPPOSITION

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QUESTION PRESENTED

Whether the Civil Aeronautics Board abused its discretion in denying a claim for prejudgment interest on an award made in an arbitration proceeding under labor protective provisions ("LPPs") which the Board imposed upon an employer not subject to the provisions of the Labor Management Relations Act.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	2
Preliminary Statement	2
Argument	2
Conclusion	3

TABLE OF AUTHORITIES

	Page
Cases:	
Lodge 743 & 1747, Int'l Ass'n of Machinists v. United Aircraft Corp., 534 F.2d 422 (2d Cir. 1975)	3
Statutes:	
29 U.S.C. §141, *et seq.*, 182	2
45 U.S.C. §151, *et seq.*, 181	2

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-6) is reported at 763 F.2d 1399. The order of the Civil Aeronautics Board ("CAB") (excerpts at Pet. App. 13-22) is reported at 103 C.A.B. 520. The CAB order denying reconsideration (Pet. App. 7-12) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 25, 1985. The petition for a writ of certiorari was filed on September 23, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).[1]

PRELIMINARY STATEMENT

For the convenience of the Court respondent Pan American World Airways, Inc. ("Pan Am") adopts and incorporates by reference the Brief In Opposition submitted by its co-respondent, ELIZABETH HANFORD DOLE, SECRETARY OF TRANSPORTATION. Therefore, Pan Am herein sets forth only one supplemental argument which it believes was not fully addressed in the federal respondent's brief.

ARGUMENT

PETITIONER'S RELIANCE UPON THE POLICIES, PROCEDURES AND PRECEDENTS OF THE NATIONAL LABOR RELATIONS BOARD ("NLRB") IS MISPLACED.

The Labor Management Relations Act ("LMRA") 29 U.S.C. §141, *et seq.*, from which the NLRB derives its jurisdiction, specifically, at 29 U.S.C. §182, *excludes* from its coverage railroads and airlines, such as Pan Am, subject to the Railway Labor Act (45 U.S.C. §§ 151 *et seq.*, 181).

Petitioners are, accordingly, incorrect in their contention that "but for the CAB's imposition of the LPP's the Petitioners would have had access to redress their grievances under the full panoply of the NLRB's rules, policies and precedents." (Pet. 5) The

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[1] The CAB's duties and responsibilities were transferred to the Department of Transportation at the end of 1984 under the Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705 et seq. and the Civil Aeronautics Board Sunset Act of 1984, Pub. L. No. 98-443, 98 Stat. 1703 et seq. Accordingly, the appropriate federal respondent has been substituted in place of the CAB. See Sup. Ct. R. 40.3.

NLRB would have no jurisdiction as to *any* issue which might arise between Pan Am and its employees.

Moreover, even in *labor* cases not involving unfair labor practices in industries where the LMRA governs the employer-employee relationship, the courts do *not* consider themselves bound by NLRB remedies that might be imposed on employers found to have committed an unfair labor practice. See, *e.g.*, *Lodge 743 & 1747, Int'l Ass'n of Machinists v. United Aircraft Corp.*, 534 F.2d 422, 446 (2d Cir. 1975).

As the NLRB has no jurisdiction over Pan Am or its employees, and as the CAB's LPP's are in no way related to a finding of an unfair labor practice, there is no logical basis, let alone legal basis, to require the award of prejudgment interest to LPP recipients merely because the NLRB may, on some occasions, award such prejudgment interest in unfair labor practice cases.

CONCLUSION

For the reasons set forth above and for the reasons set forth in the federal respondent's brief, the petition for a writ of certiorari should be denied.

Dated: January 14, 1986

Respectfully submitted,

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